

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7619

Petition of National Mobile Communications,)
Inc., d/b/a Sovernet Communications, for)
designation as an Eligible Telecommunications)
Carrier in areas served by non-rural telephone)
companies under the Telecommunications Act of)
1996)

Order entered: 7/19/2011

PROTECTIVE ORDER REGARDING COMPLIANCE FILING MATERIALS

I. INTRODUCTION

On April 15, 2011, the Public Service Board (the "Board") issued an Order designating National Mobile Communications, Inc., d/b/a Sovernet Communications ("Sovernet"), an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e) for a service area consisting of 92 wire centers in areas served by Vermont's non-rural telephone companies. In that Order, the Board imposed a number of conditions on the designation and directed Sovernet to make a number of compliance filings to fulfill those conditions. Among the material to be filed by Sovernet was a "five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center" for which it sought designation and expected to receive support (the "Plan").¹ On July 7, 2011, Sovernet filed a Motion for Protective Order² concerning certain information that has been redacted from the Plan, filed with the Board on June 14, 2011, stating that the Plan contains information that is competitively sensitive and should be maintained as confidential. Sovernet asserts that the

1. Docket 7619, Order of 4/15/11 at 32.

2. The cover letter accompanying the filing referred to it as a Motion for Protective Order. However, the motion itself was actually captioned Motion for Approval of Protective Agreement and asked for approval of a previously submitted Protective Agreement as well as a Protective Order that accompanied the motion. In this Order we address the request for a Protective Order. We will address the request for approval of the Protective Agreement in a companion Order.

information should be kept confidential for at least five years, which is the time horizon covered by the Plan. Sovernet submitted an affidavit to support its request for confidentiality.

No other party opposed Sovernet's motion.

II. DISCUSSION

We have reviewed the motion and supporting materials, and we conclude that Sovernet has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, we hereby grant Sovernet's motion for a protective order for a period not to exceed five years.

To promote full public understanding of the basis for its decisions, this Board has actively taken steps to limit the amount of information subject to protective orders. We have encouraged parties to remove material from that protection to the extent possible. Since 2001, we have required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.³ Generally, we only resolve disputes about information when there is a genuine disagreement about its confidential nature.⁴ However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?

3. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

4. *Id.* at 6.

- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?⁵

Sovernet asserts that the information redacted from the public version of the Plan should be kept confidential for the following reasons:

- The redacted language is commercially sensitive information not known outside the company, and is not published at the same level of detail in SEC filings or annual reports;
- The redacted language provides insight into the company's business strategy for serving market segments that are, in part, subject to competition. Disclosure of the information would undermine the company's planning and short and long term goals and result in lost revenues;
- If the information were made public, Sovernet's competitors could utilize the information to make investment, marketing and pricing decisions that could then undermine the enterprise value of Sovernet.

We have reviewed the motion and supporting materials, and we have applied the existing standard. We conclude that Sovernet has made a *prima facie* showing that the redacted information is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting that information. Therefore, Sovernet has made a *prima facie* showing that confidential treatment is warranted for the redacted portions of the Plan.

In addition, we have consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. We expect Sovernet to do the same here. Today we rule that the redacted information will receive confidential treatment for a period not to exceed five years because that is the time horizon covered by the Plan. However, parties and other persons retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or removed completely from protection as confidential information.

5. See e.g., *Entergy Docket*, Order of 3/29/02 at 2.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by Sovernet, as described in this Order, shall be treated in this proceeding as follows:

1. All documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board.

Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and any Protective Agreement approved in this Docket, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 19th day of July, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 19, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)